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Federal Communications Commission

DA 98-502

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) CC Docket No. 97-249
Beehive Telephone Company, Inc.)
Beehive Telephone, Inc. Nevada)
) Transmittal No. 8
Tariff F.C.C. No. 1)

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: March 13, 1998

Released: March 13, 1998

Filing Schedule

Direct Case: April 3, 1998
Opposition or Comments: April 10, 1998
Rebuttal: April 14, 1998

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On December 17, 1997, Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada (collectively "Beehive") filed Transmittal No. 8, which proposed to revise its interstate access service rates in accordance with the Commission's *Access Charge Reform Order*.¹ On December 30, 1997, the Competitive Pricing Division of the Common Carrier Bureau (Bureau) suspended Beehive's Transmittal No. 8 for one day, initiated an investigation into the lawfulness of this tariff filing, and imposed an accounting order.² In this Order, we designate issues for the investigation of Beehive's Transmittal No. 8 and we direct Beehive to file additional supporting documentation.

II. BACKGROUND

2. As a cost schedule carrier, Beehive filed Transmittal No. 8 pursuant to Section 61.39

¹ *Access Charge Reform Order*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform Order*). On December 23, 1997, AT&T Corp. (AT&T) filed a petition to suspend and investigate Beehive's tariff. See Petition of AT&T Corp. on Rate of Return LEC Tariff Filings at 6 (filed December 23, 1997) (AT&T Petition). On December 29, 1997, Beehive filed a response to AT&T's petition. See Letter from Russell D. Lukas, Attorney for Beehive, to Magalie Roman Salas, FCC, dated December 29, 1997 (*Beehive Reply*).

² Tariffs Implementing Access Charge Reform, Beehive Telephone Company, CC Docket Nos. 97-250 and 97-249, Memorandum Opinion and Order, DA 97-2724 (Com. Car. Bur., Comp. Pric. Div., rel. Dec. 30, 1997) (*Access Charge Reform Suspension Order*).

of the Commission's rules. Section 61.39 requires cost schedule carriers that make changes to traffic sensitive and common line rates to file cost-of-service studies.³ Cost schedule carriers also must file the following information when they make changes to end user common line rates: (1) a cost-of-service study; (2) estimates of how the changes affect the traffic and revenues for the service; and (3) estimates of how any changes to a service affect the traffic and revenues of the carrier's overall services.⁴ Further, the rates of incumbent LECs subject to cost-of-service regulation may not reflect a rate of return that exceeds 11.25%.⁵ Finally, the Commission may generally "require any carrier to submit such information as may be necessary for review of a tariff filing."⁶

3. The data Beehive filed with Transmittal No. 8 reveal that the proposed rates are based on cost information from the 1995 and 1996 period, the same historical period Beehive used to calculate the rates reflected in Transmittal No. 6, Beehive's 1997 annual access tariff. As explained below, in the investigation of Beehive's 1997 annual access tariff, the Commission prescribed rate reductions that reflected an 11.25% rate of return and disallowances to Beehive's reported operating expenses. This investigation of Transmittal No. 8 addresses many of the same issues that were the subjects of the investigation of Beehive's 1997 annual access tariff.

A. Beehive's 1997 Annual Access Tariff

4. On January 6, 1998, the Commission released the *Beehive Tariff Investigation Order*,⁷ concluding its investigation of the rates filed by Beehive in its 1997 annual access tariff. The Commission concluded that Beehive's premium and non-premium local switching access rates filed in its 1997 annual access tariff were unjust and unreasonable. The Commission found that Beehive's local switching rates reflected an unexplained sharp increase in operating costs and corporate expenses in 1995 and 1996 without commensurate increases in plant investment and business operations.⁸ The Commission also found that the rate of return Beehive used in calculating its rates was unjust and unreasonable because it exceeded the prescribed overall rate of return of 11.25%. The Commission prescribed rates for Beehive's premium and non-premium local switching charge based on an 11.25% return and total operating expenses equal to 25% of Beehive's total plant in service (TPIS). The

³ 47 C.F.R. §§ 61.39(b)(1), 61.39(b)(3).

⁴ 47 C.F.R. § 61.39(b)(5).

⁵ *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, 5 FCC Rcd 7507 (1990) (*Rate of Return Represcription Order*), recon., 6 FCC Rcd 7193 (1991), *affirmed*, *Illinois Bell Telephone Co. v. FCC*, 988 F.2d 1254 (D.C. Cir. 1993); *see also*, 47 C.F.R. § 61.39(c).

⁶ 47 C.F.R. § 61.39(a).

⁷ In the Matter of Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada, Transmittal No. 6, CC Docket 97-237, Memorandum Opinion and Order, FCC 98-1 (released January 6, 1998) (*Beehive Tariff Investigation Order*).

⁸ *Beehive Tariff Investigation Termination Order* at para. 14.

Commission disallowed Beehive's operating expenses in excess of 25% of its TPIS because this ratio closely approximates both Beehive's ratio in 1994 and 1995, and the average ratio among LECs serving a similar number of access lines.⁹ The Commission prescribed a premium local switching rate of \$0.009443 and a non-premium local switching rate of \$0.004249.

5. The *Beehive Tariff Investigation Order* directed Beehive to refund the difference between the actual local switching revenues it obtained between August 6, 1997 and December 31, 1997 and the local switching revenues that it would have obtained during this period based on the rates prescribed by the Commission, plus interest. On January 9, 1998, Beehive submitted its refund plan,¹⁰ and, on January 20, 1998, the Bureau approved Beehive's refund plan.¹¹

B. Beehive's Transmittal No. 8

6. Beehive's Transmittal No. 8 proposes to revise its F.C.C. Tariff No. 1 pursuant to the Commission's *Access Charge Reform Order*. Beehive proposes per-minute switching rates of \$0.028252 for premium local switching and \$0.01815 for non-premium local switching.¹² Beehive also states that it proposes to reduce local transport facility rates by approximately 20 percent, and to raise local transport termination rates by approximately 50 percent. The effective date of the tariff filing was January 1, 1998.

C. AT&T's Petition

7. AT&T requests that the Commission suspend and investigate Beehive's Transmittal No. 8. AT&T alleges that Beehive failed to provide supporting documentation with its proposed tariff filing and failed to justify the rates in Transmittal No. 8. AT&T notes that Beehive's previous tariff filing, Transmittal No. 6, was under investigation when AT&T's petition was filed and, therefore, the proposed rates in Transmittal No. 8 probably should be lower.¹³

⁹ See Universal Service Fund (USF) 1997 Submission of 1996 Study Results by the National Exchange Carrier Association, Inc., October 1, 1997; Universal Service Fund (USF) 1996 Submission of 1995 Study Results by the National Exchange Carrier Association, Inc., October 1, 1996; Universal Service Fund (USF) 1995 Submission of 1994 Study Results by the National Exchange Carrier Association, Inc., October 1, 1995.

¹⁰ Letter from Russell D. Lukas, Counsel for Beehive, to James D. Schlichting, Common Carrier Bureau, Chief of the Competitive Pricing Division, dated January 9, 1998; Letter from Russell D. Lukas to James D. Schlichting, dated January 12, 1998.

¹¹ In the Matter of Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada, Transmittal No. 6, CC Docket 97-237, Order, DA 98-333 (Com. Car. Bur., Com. Pric. Div., released February 20, 1998) (*Beehive Refund Plan Order*).

¹² Beehive Access Tariff FCC No. 1, Transmittal No. 8 (December 17, 1997) (*Transmittal No. 8*).

¹³ AT&T Petition at 6.

D. Beehive's Reply

8. In response to AT&T's contention that Beehive's filing lacks supporting documentation, Beehive submitted additional cost support with its reply. Beehive argues that the Commission should deny AT&T's request because Beehive has been prejudiced by AT&T's failure to properly serve Beehive with AT&T's opposition.¹⁴

III. ISSUES DESIGNATED FOR INVESTIGATION

9. In the *Beehive Tariff Investigation Order*, we found that the average total operating expense to TPIS ratio among LECs with a comparable number of access lines to Beehive was 21.55%. We also found that Beehive's total operating expense to TPIS ratio was 23.55% in 1994 and 24.03% in 1995. By contrast, Beehive's Transmittal No. 8 reveals a ratio of total operating expenses to TPIS of 59.96%. Beehive has not offered a satisfactory explanation for these high expense levels or justified the rates based on the 59.96% ratio. We, therefore, designate for investigation whether Beehive's premium and non-premium local transport facility, local transport termination, and local switching rates filed in Transmittal No. 8 are just and reasonable. Accordingly, we direct Beehive to explain in detail why its ratio of operating expenses to TPIS, reflected in Transmittal No. 8, is significantly higher than its ratio in 1994 and 1995. We also direct Beehive to explain in detail why its operating expenses to TPIS ratio in Transmittal No. 8 is significantly higher than the ratio among LECs with a similar number of access lines.

10. In order to evaluate the reasonableness of Beehive's rates in light of its historical cost trends, we direct Beehive to provide detailed cost data for calendar years 1994, 1995, and 1996 in the format described below. Specifically, Beehive must provide all investment, expense, and revenue account balances that it is required to keep as a Class B company under Part 32 of the Commission's rules,¹⁵ and show the amounts in the access charge categories outlined in Part 69 of the Commission's rules.

a. ARMIS 43-01 Information. We direct Beehive to complete fully Table 1 of FCC ARMIS Report 43-01 for calendar years 1994, 1995, and 1996. Beehive must submit Table 1 of FCC ARMIS Report 43-01 on a 3.5 inch computer disk in Lotus Release-3 format.

b. General Ledger. In accordance with Section 32.12 of the Commission's rules, each company is required to keep financial records in accordance with generally accepted accounting principles (GAAP).¹⁶ GAAP requires maintenance of general ledgers, which include all accounts and amounts used for internal accounting purposes. We direct Beehive to

¹⁴ Beehive Reply at 1.

¹⁵ Part 32 of the Commission's rules contains the Uniform System of Accounts (USOA) for telecommunications companies, which is a historical financial accounting system companies adhere to in booking their various accounts. The USOA is comprised of different accounts, to which companies book associated costs. 47 C.F.R. Part 32.

¹⁶ 47 C.F.R. § 32.12(a).

provide its unedited general ledgers for calendar years 1994, 1995, and 1996. This information must be submitted on a 3.5 inch computer disk in Lotus Release-3 format. The expenses in the ledgers may not be grouped, batched, or modified.

c. Subsidiary Records Information. We also direct Beehive to provide all subsidiary record information for each summary account for corporate operations, plant specific, plant nonspecific, and customer operations expenses required to be kept in accordance with Section 32.12 of the Commission's rules.¹⁷ The subsidiary record information must include: (1) the salaries and wages; (2) benefits; (3) rents; (4) other expenses; (5) clearances; and (6) reimbursements.¹⁸ Beehive must provide this information on a 3.5 inch computer disk in Lotus Release-3 format.

d. Lease Agreement Expenses. In its petition for reconsideration of the *Beehive Tariff Investigation Order*, Beehive claims that it began leasing switching equipment in 1995 and that lease costs caused a dramatic increase in its plant specific expenses.¹⁹ According to Beehive, lease costs totalled \$796,074 in 1995 and \$672,000 in 1996.²⁰ In order to verify the high expense levels that Beehive claims for leasing switching equipment, we require Beehive to state whether its lease agreements for switching equipment are capital leases²¹ or some other type of lease agreement. Beehive must also identify separately the amount of amortization expense for its capital leases that is included in the general and administrative expense account for 1995 and 1996.²² For other types of leases, we direct Beehive to list the expenses it incurred for those leases during 1995 and 1996. Beehive also must file copies of all switching equipment lease agreements with its direct case.

e. Legal Expenses. Beehive indicates that its high corporate operations expenses are due in part to extraordinarily high litigation expenses.²³ According to Beehive, its legal and

¹⁷ Section 32.12 of the Commission's rules requires companies to keep financial records with sufficient particularity to show fully the facts pertaining to all entries in the accounts. This rule also requires companies to maintain financial and subsidiary records in a manner so that the type of information that does not warrant disclosure as an account or subaccount is readily available, and permits ready identification and examination by the Commission.

¹⁸ 47 C.F.R. § 32.5999(f).

¹⁹ See Beehive Petition for Reconsideration, CC Docket No. 97-237 at 19 (filed February 5, 1998) (Beehive Petition for Reconsideration).

²⁰ *Id.*

²¹ 47 C.F.R. § 32.2681.

²² See also 47 C.F.R. § 32.6720.

²³ Beehive Petition for Reconsideration at 19.

accounting costs were \$557,236 in 1994, \$954,594 in 1995 and \$457,520 in 1996.²⁴ We require Beehive to list all legal expenses included in the general and administrative expenses account, and to describe each administrative proceeding and court action for which Beehive incurred legal costs for interstate access services. Beehive must identify the specific costs incurred for each administrative proceeding or court action. In addition, we require Beehive to explain how interstate access customers benefitted from each of these court actions and administrative proceedings and to identify each court action and administrative proceeding that resulted in an adverse action against Beehive. Further, Beehive must provide a detailed list of the legal expenses directly related to its capital leases that have been recorded as plant non-specific operations expenses.

f. Nonregulated Activities. We also direct Beehive to identify all of its nonregulated activities, as defined in Section 32.23 of the Commission's rules, including, but not limited to, any cable, cellular, and other wireless services it may offer. Beehive's description must include an explanation of the amount of corporate operations, plant specific, plant nonspecific, and customer operations expenses allocated between its regulated and nonregulated activities.

g. Additional Cost Support. We also direct Beehive to show the development of its January 1, 1998 revenue requirement based on its 1995 and 1996 actual costs as adjusted to reflect the *Universal Service Order*²⁵ and the *Access Reform Order*.²⁶ Beehive must also show the development of all traffic sensitive rates, including transport and local switching rates, filed in Transmittal No. 8. We also direct Beehive to provide all workpapers and cost studies used to calculate these rates and to determine the plant specific, plant nonspecific, corporate operations, and customer operations expenses.

h. Explanation of Changes in 1995-1996 Data. Beehive's filing shows that the proposed rates in Transmittal No. 8 are based on cost information from the 1995-1996 period, the same historical period Beehive used to calculate the rates reflected in its 1997 annual access tariff.²⁷ Although this cost information appears to have been recalculated to reflect certain changes required by the *Universal Service Order* and the *Access Reform Order*, the cost data filed in support of Transmittal No. 8 reflects several additional changes that Beehive made since it filed cost data in support of Transmittal No. 6. Beehive did not provide an explanation, however, of the additional changes in the information filed with Transmittal No. 8. We

²⁴ *Id.*

²⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997); First Quarter 1998 Universal Service Contribution Factors Revised and Approved, CC Docket No. 96-45, Public Notice, DA 97-2623 (rel. Dec. 16, 1997).

²⁶ *Access Charge Reform Order*, 12 FCC Rcd 15982; *Access Charge Reform*, Order on Reconsideration, 12 FCC Rcd 10119 (1997); Second Order on Reconsideration, 12 FCC Rcd 16606 (1997) (collectively, *Access Charge Reform Proceeding*).

²⁷ Beehive Access Tariff FCC No. 1, Transmittal No. 8 (December 17, 1997) (*Transmittal No. 8*).

therefore direct Beehive to provide an explanation of each change made to the cost data filed for Transmittal No. 6 that is reflected in the cost information filed with Transmittal No. 8 and to state the specific reason for each change.

11. Beehive's provision of the information requested is necessary to determine whether the proposed rates are just and reasonable. Failure to provide convincing explanations and justifications of these expense levels may result in the prescription of rates that are just and reasonable, and these rates may reflect large disallowances of certain costs claimed by Beehive. If Beehive fails to justify its high costs, the Commission may prescribe rates using a methodology similar to that used in the *Beehive Tariff Investigation Order*.

IV. PROCEDURAL MATTERS

A. Filing Schedules

12. This investigation will be conducted as a notice and comment proceeding to which the procedures set forth below shall apply. Beehive shall file a direct case addressing the issue designated above no later than April 3, 1998.

13. Pleadings responding to the direct case may be filed no later than 7 days after filing of the direct case and must be captioned "Opposition to Direct Case" or "Comment to the Direct Case." "Rebuttals" to the opposition or comments may be filed no later than 4 days after the filing of comments on or opposition to the direct case.

14. An original and seven copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036. Also, one copy must be delivered to the Competitive Pricing Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments should specify the docket number of this investigation. Parties are also encouraged to submit their pleadings electronically through the Electronic Tariff Filing System.

B. *Ex Parte* Requirements

15. This proceeding is designated permit but disclose for purposes of the Commission's *ex parte* rules. *Ex parte* contacts, (i.e., written or oral communications that address the procedural merits of the proceeding and are directed to any member, officer or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until the commencement of the Sunshine Agenda period. The Sunshine Agenda period terminates when a final order is released and the final order is issued. Written *ex parte* contacts and memoranda summarizing oral *ex parte* contacts must be filed on the day of the presentation with the Secretary and Commission employees receiving each presentation. For other requirements, see generally Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. §§ 1.1200 *et seq.*

V. ORDERING CLAUSES

16. Accordingly, pursuant to Sections 4(i), 201(b), 202(a), 204(a), and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 202(a), 204(a), and 205, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the issues set forth in this Order **ARE DESIGNATED FOR INVESTIGATION.**

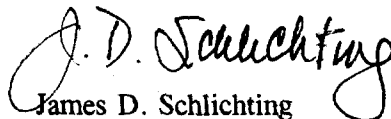
17. **IT IS FURTHER ORDERED** that Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada **SHALL BE PARTIES TO THIS PROCEEDING.**

18. **IT IS FURTHER ORDERED** that Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada **SHALL FILE** a direct case addressing the issues designated and providing the information required above by April 3, 1998.

19. **IT IS FURTHER ORDERED** that Pleadings responding to the direct case **SHALL BE FILED** by April 10, 1998 and must be captioned "Opposition to Direct Case" or "Comment to the Direct Case."

20. **IT IS FURTHER ORDERED** that "Rebuttals" to the opposition or comments or opposition to the direct case **SHALL BE FILED** by April 14, 1998.

FEDERAL COMMUNICATIONS COMMISSION



James D. Schlichting
Deputy Chief, Common Carrier Bureau